

Daniel Jester v. John Marshall, LC 09-0890

Daniel Jester (Plaintiff), a former inmate at California Men's Colony (CMC) now incarcerated at California Medical Facility – Vacaville, brings this action against John Marshall (Defendant), the Warden of CMC. Plaintiff's form complaint seeks monetary damages for loss of use of property, and attempts to allege a cause of action for intentional tort.

Attached to the form complaint is one cause of action for general negligence. Plaintiff provides additional allegations in support of the negligence cause of action. He also alleges a claim for the loss of personal property. Based upon the allegations and the exhibits attached to the complaint, it appears that Plaintiff is contesting CMC's disciplinary findings against him for behavior that could lead to violence.

Defendant demurs on the grounds Plaintiff failed to exhaust his administrative remedies and failed to file a timely government tort claim.

"Under both state and federal law, a prisoner must exhaust available administrative remedies before seeking judicial relief." (*Wright v. State of California* (2004) 122 Cal.App.4th 659, 664) Exhaustion of administrative remedies is even mandated when the prisoner seeks monetary damages. (*Id* at 668) Here, Plaintiff alleges that: "Both issues administratively exhausted at CDCR Director's level review." Plaintiff also attaches, as exhibits to the complaint, second and third level reviews. Thus, there is an allegation that Plaintiff exhausted his administrative remedies prior to filing this action.

Because Plaintiff brings this action against a state employee, however, his claims are also subject to the Government Tort Claims Act, which requires a claim presentation prior to the filing of an action. (Gov. Code §945.4) Claims for injury to person or property must be presented within 6 months of the accrual of the cause of action. (Gov. Code §911.2) All other claims must be presented within one year. (Gov. Code §911.2) "Failure to timely present a claim for money or damages to a public entity bars a plaintiff from filing a lawsuit against that entity." (*State v. Superior Court* (2004) 32 Cal.4th 1234, 1239)

There are no definitive allegations in the complaint establishing the date when Plaintiff's causes of action accrued, or whether Plaintiff timely complied with the claims presentation requirement of the Government Tort Claims Act.

In reply, Defendant references correspondence from the Victim Compensation and Government Claims Board dated April 14, 2009 and December 17, 2009, respectively, both of which state that Plaintiff failed to submit a timely claim. However, a demurrer can only challenge defects that either appear on the face of the complaint or result from matters that can be judicially noticed. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318)

At this juncture the Court has no basis to determine upon which to determine whether Plaintiff complied with the Government Tort Claims Act claims presentation requirement. Plaintiff fails to allege his compliance with the requirement.

Defendants' demurrer to Plaintiff's complaint is sustained with leave to amend. The amended complaint shall be filed within 35 days from the date of this Order.